IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 44 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M VIJAYCHAND - Petitioner(s)

Versus

COLLECTOR & 1 - Respondent(s)

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Appearance :

MR BA SURTI for Petitioner(s) : 1,
MS. ARCHNA RAVAL, AGP for Respondent(s) : 1-2.

NOTICE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/02/2006

ORAL JUDGMENT

1.Leave to amend by challenging the order passed by the Deputy Secretary, Food and Civil Supply, dated 22.11.1994.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Food and Civil Supply, State of Gujarat, dated 22.11.1994 passed in Revision Application No.588 of 1993 in partly allowing the said revision application by modifying the order passed by the Collector, Rajkot dated 30.9.1993 passed in Case No.6A/3/93 by which instead of 260 tins of groundnut oil, the Deputy Secretary has passed an order of confiscation of only 130 tins of groundnut oil.

3. The show-cause notice came to be issued upon the petitioner by the District Civil Supply Officer, Rajkot dated 18.5.1993 exercising powers under Section 6(A) of the Essential Commodities Act and the petitioner was directed to show cause as to why 1400 tins of groundnut oil should not be confiscated for the allegations and the charges levelled in the said show-cause notice with regard to adulteration and some more stock of groundnut oil and the stock. The Collector, Rajkot passed an order on 30.9.1993 confiscating 1400 tins of groundnut oil (inclusive of 45 tins of castor oil). Being

aggrieved and dissatisfied with the same, the petitioner preferred appeal/revision application being Revision Application No.588 of 1993 before the State Government i.e. before the Deputy Secretary, Food and Civil Supply, State of Gujarat and the Deputy Secretary, Food and Civil Supply, State of Gujarat by its judgment and order dated 22.11.1994 partly allowed the said revision application and reduced the penalty of confiscation from 1400 tins of groundnut oil to 130 tins of groundnut oil. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri B.A.Surti, learned advocate appearing on behalf of the petitioner has submitted that in fact, there is no finding against the petitioner and/or there is no evidence against the petitioner by which it can be said that the petitioner was having more quantity of groundnut oil and/or the stock and the findings which are given, are not based on evidence. It is further submitted that in fact, the Deputy Secretary has also observed that certain things which are mentioned in the reply to the show-cause notice are not considered. He

has also further submitted that still in the facts and circumstances of the case assuming that the petitioner has committed some wrong, then also, the confiscation of 130 tins of groundnut oil is too harsh and has requested to reduce the same.

5. Ms. Archna Raval, learned AGP while supporting the order passed by the revisional authority has submitted that in the facts and circumstances of the case the confiscation of 130 tins of groundnut oil is just and proper and is not required to be interfered with.

6. Heard the learned advocates appearing on behalf of the parties.

7. Considering the observations made by the Deputy Secretary in its impugned order dated 22.11.1994 and as there is no specific finding with regard to how much quantity was in excess, the matter is required to be remanded to the Collector for passing the order afresh and to give specific finding. However, as this matter is of the year 1995 and considering the request made on behalf of the petitioner to reduce the penalty instead of remanding the matter, this Court itself has

considered the submissions made on behalf of the petitioner with regard to reduction of penalty and considering the evidence on record and the allegations in the show-cause notice as well as the findings given by the Collector, Rajkot as well as the Deputy Secretary, if instead of 130 tins of groundnut oil, 90 tins of groundnut oil are confiscated, then it will meet the ends of justice.

8. Under the circumstances, the order passed by the Deputy Secretary, Food and Civil Supply, State of Gujarat dated 22.11.1994 passed in revision application No.588 of 1995 is modified and it is ordered that instead of 130 tins of groundnut oil, there will be confiscation of 90 tins of groundnut oil and the order is modified to that extent. If the petitioner has provided bank guarantee to the respondents then it will be open for the respondents to encash the bank guarantee and recover the amount considering the confiscation of 90 tins of groundnut oil and the balance amount to be paid/returned to the petitioner. If the bank guarantee is not provided and/or no amount has been paid till date, then the petitioner is directed to pay the amount considering 90 tins of groundnut oil as confiscated

within a period of 6 weeks from today.

9. For the reasons stated above, the petition succeeds partly. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.